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In the
Supreme Court of the United States

.....Term, 1964
No. 179

STANLEY M. CORBETT, GUARDIAN OF THE PROPERTY OF CONSTANTINE NEONAKIS, A MINOR,

Appellant,

vs.

VIOLA STERGIOS, a/k/a VIOLA STERYIAKIS,

Appellee.

Appeal from the Supreme Court of the State of Iowa

MOTION TO DISMISS

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Appellee moves to dismiss the appeal of the appellant to the United States Supreme Court from a decision of the Supreme Court of Iowa, No. 51095, dated February 11, 1964, entitled Stanley M. Corbett, Guardian of the Property of Constantine Neonakis, a minor, Appellant, vs. Viola Stergios a/k/a Viola Steryiakis, Appellee, and printed in 126 N. W. 2d 342.

OBJECT OF MOTION

The object of appellee's motion is to dismiss appellant's appeal in this matter from the State Court on the

grounds: (1) that this appeal does not present a substantial federal question, and (2) that the federal question sought to be reviewed was not properly raised in the Trial Court and on appeal to the Supreme Court of Iowa.

FACTS ON WHICH MOTION FOR DISMISSAL IS BASED

A. The appeal does not present a substantial federal question.

The Iowa law as provided in Section 567.8, Code of Iowa (set out in full in Appendix III, Appellant's jurisdictional statement) provides that non-resident foreign aliens may inherit property in Iowa upon the same terms and conditions as a citizen of the United States if a reciprocal right upon the part of the United States citizen to inherit exists in the country of the alien's residence. The code section places the burden of proving the existence of such reciprocal right upon the non-resident alien seeking to inherit property in Iowa.

In the trial of this case the issue raised was whether the Appellant's ward, a non-resident foreign alien of a coastal area in Crete, Greece, had met the burden of this code section as a matter of fact. The Trial Court found in its Judgment and Decree (set out in full in Appendix II, Appellant's Jurisdictional Statement) that the Appellant had not carried the burden imposed by the Iowa statute. The Trial Court could not make a finding that the Appellant had carried the burden because sufficient proof required by this statute was not introduced in the trial.

On appeal the Iowa Supreme Court affirmed this finding of the Trial Court. In the opinion of the Iowa Supreme Court (set out in full in Appendix I, Appellant's Jurisdictional Statement) it was a question of fact which was herein involved. The Iowa Supreme Court specifically notes that the Trial Court held that the Appellant had failed to carry the burden of proving certain facts. The Appellant failed to prove that Greece, the foreign country herein, had not imposed certain conditions on United States nationals inheriting in a certain area in Crete, Greece, or if some restrictions had been placed, whether they were such as interferred in any manner with the provisions of Section 567.8. The record is silent. The Iowa Supreme Court states in its opinion the law in quoting the Trial Court as follows:

> "The Court correctly states it cannot be presumed reciprocal rights exist; proof must be introduced."

The only question herein presented is one of fact, not law, and these facts the Iowa Courts were bound to decide. Was there evidence of such reciprocal rights? The Iowa Courts decided as a fact there was not. These facts the United States Supreme Court should not review on appeal. The question of facts presented in this case is not a federal question which need be reviewed. What proof was properly and sufficiently introduced is solely for the Iowa Courts to decide, based on their rules of evidence.

The Iowa Trial Court also found as a fact lack of reciprocity not only the matter of inheritance rights between citizens of the United States and certain parts of Greece specifically, a coastal area in Crete, Greece, but

also in matters concerning inheritance rights between adoptive parent and adoptive child. The Iowa Supreme Court notes in its opinion in this case that certain affirmative evidence introduced tended to show that reciprocity did not exist in matters of inheritance rights between adoptive parent and adoptive child. The Iowa Court notes that the Iowa law and that of Greece in this matter differs. This it makes an additional basis of its decision. This is again a fact question which the Iowa Courts decided and not one concerning a United States Treaty or law. Because it is merely a question of fact again, it does not present a substantial federal question for review by the United States Supreme Court.

B. The federal question sought to be reviewed was not properly raised in the Trial Court and on appeal to the Supreme Court of Iowa.

The Trial Court decided in this case that the appellant had failed to carry the burden of proof required by Section 567.8 of the Code of Iowa. That the Court cannot indulge in a presumption that the reciprocal rights exists, but must have some evidence of such rights.

That appellant on appeal to the Supreme Court of Iowa assigned as sole ground of error, to wit:

> "The Court erred in holding that Treaty between the United States and Greece did not allow plaintiff's ward, a citizen of Greece, to take an interest in the estate of his adopting father." (page 9 of appellant's Jurisdiction Statement to this court).

The Supreme Court of Iowa sustained the Trial Court in its decision and did not construe the treaty as to den.

plaintiff appellant's ward from taking an interest in Iowa real estate.

The appellant now for the first time assigns as error and requests that a court construe the treaty as nullifying Section 567.8 of the Code of Iowa per se.

It is elementary law that appellant should have presented this question to the Iowa courts for decision before this Court should consider the matter.

This appellant is attempting to change the issues in the Trial Court and the Supreme Court of Iowa. The Trial Court did not nullify the said treaty in any respect, and neither did the appellant or the Iowa Courts properly raise a federal question.

Respectfully submitted,

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